IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL ANDREWS,[1]	§	
	§	No. 783, 2010
Petitioner Below-Appellant,	§	
	§	
	§	Court Below–Family Court
v.	§	of the State of Delaware
	§	in and for Kent County
JAIME ANDREWS,	§	File No. CS02-04531
	§	Petition No. 05-39592
Respondent Below-Appellee.	§	
	§	

Submitted: February 18, 2011
Decided: April 12, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 12th day of April 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The petitioner-appellant, Daniel Andrews ("Husband"), filed an appeal from the Family Court's December 14, 2010 order denying his motion to terminate alimony. The respondent-appellee, Jaime Andrews ("Wife"), has moved to affirm the Family Court's judgment on the ground

[1] The Court assigned pseudonyms to the parties by Order dated December 29, 2010. Supr. Ct. R. 7(d).

that it is manifest on the face of the opening brief that the appeal is without merit.[2] We agree and affirm.

(2) The record before us reflects that Husband and Wife have been involved in litigation in the Family Court since 2005. In December 2005, the Family Court issued an alimony award to Wife in the amount of $2,282.11 per month. In November 2009, the Family Court re-established Husband's alimony obligation at $2,282.11 per month. At that time, Husband owed $52,231.06 in arrears. On July 19, 2010, Husband filed a motion to terminate his alimony obligation. This was the latest of several such motions, but the first to allege that Husband's obligation should end because Wife is cohabiting with her boyfriend. Husband's motion also requested that he be reimbursed for alimony payments he made during the period Wife cohabited with her boyfriend.

(3) A hearing on Husband's motion took place in the Family Court on November 5, 2010, at which both Husband and Wife appeared *pro se*. Wife's boyfriend also testified. The evidence adduced at the hearing reflects that Wife and her boyfriend began dating in 2003 or 2004. They date one another exclusively and engage in sexual relations with each other. Wife has 3 minor daughters and her boyfriend has 1 minor son. The boyfriend began

[2] Supr. Ct. R. 25(a).

spending the night at Wife's residence after they had been dating about 3 years. There is no particular pattern regarding when the boyfriend stays overnight at Wife's residence. When he stays overnight, he brings personal items with him in a duffel bag and does not keep any toiletries at Wife's residence.

(4) The boyfriend maintains his own residence, does not help with Wife's expenses, and does not answer the telephone or do household chores at Wife's residence. They have never discussed setting up a single household together. They do not own property together and have not named each other as beneficiaries on their life insurance policies. Wife and her boyfriend take separate vacations with their own children. When they took a vacation together with their children, Wife slept with her daughters and the boyfriend slept with his son. In its order dated December 14, 2010, the Family Court concluded, based upon the testimony presented at the hearing, that Husband did not demonstrate that Wife and her boyfriend regularly reside with each other and, on that ground, denied Husband's request to terminate alimony.

(5) In his appeal, Husband claims that the Family Court abused its discretion and committed legal error when it denied his motion. He requests that the Family Court's order be vacated and that he be reimbursed for

payments made to Wife beginning January 1, 2004. He also requests that the Family Court judge who presided over the hearing be barred from ruling in future matters involving him on the ground that the judge is biased against him.

(6) The legal standards applicable to this matter are contained in Del. Code Ann. tit. 13, §1512(g). That statute, in part, provides the following:

> Unless the parties agree otherwise in writing, the obligation to pay future alimony is terminated upon . . . the remarriage or cohabitation of the party receiving alimony. As used in this section, "cohabitation" means regularly residing with an adult of the same or opposite sex, if the parties hold themselves out as a couple, and regardless of whether the relationship confers a financial benefit on the party receiving alimony. Proof of sexual relations is admissible but not required to prove co-habitation. (Emphasis added.)

This Court also has defined "cohabitation" as "liv[ing] together, with some degree of continuity, as though . . . husband and wife."[3]

(7) The standard and scope of review applicable to an appeal from a decision of the Family Court extends to a review of the facts and the law as well as to a review of the inferences and deductions made by the trial judge.[4] Where the Family Court's decision involves a ruling of law, this Court's

[3] *Quisenberry v. Quisenberry*, 449 A.2d 274, 276 (Del. 1982).
[4] *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

standard of review is *de novo*.[5] If the Family Court has correctly applied the law, the standard of review is abuse of discretion.[6] This Court will not disturb the Family Court's factual findings if they are supported by the record and are the product of an orderly and logical deductive process.[7]

(8) We have reviewed the parties' submissions and the Family Court record, including the transcript of the November 5, 2010 hearing, in light of the legal standards enunciated above. We find no abuse of discretion or legal error on the part of the Family Court in concluding that Wife and her boyfriend are not cohabiting and in denying Husband's motion to terminate alimony. Moreover, we find no basis in the record for Husband's claim that the Family Court judge is biased against him[8] or for his request that the Family Court judge be barred from ruling in future Family Court matters involving him.

(9) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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[5] *Waters v. Division of Family Services*, 903 A.2d 720, 724 (Del. 2006).
[6] *Solis v. Tea*, 468 A.2d at 1279.
[7] Id.
[8] *In re Wittrock*, 649 A.2d 1053, 1054 (Del. 1994) (bias is not established simply because a judge has made adverse rulings against a party).

NOW, THEREFORE, IT IS ORDERED that the appellee's motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice